

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

**SIEMENS PRODUCT LIFECYCLE
MANAGEMENT SOFTWARE INC.,**

Plaintiff,

v.

**MERCURY METAL FORMING
TECHNOLOGIES, LLC,**

Defendant.

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Civil Action No.: 4:18-cv-00109

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, the matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On September 26, 2018, the report of the Magistrate Judge (the “Report”) (Dkt. #17) was entered, containing proposed findings of fact and recommendations that Plaintiff Siemens Product Lifecycle Management Software Inc.’s (“Plaintiff”) Motion for Default Judgment (the “Motion”) (Dkt. #8) against Defendant Mercury Metal Forming Technologies, LLC (“Defendant”) be granted. *See id.*

Having received the Report of the United States Magistrate Judge, and no objections thereto having been timely filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge’s report as the findings and conclusions of the Court.

This lawsuit seeks damages for breach of a settlement agreement, copyright infringement pursuant to 17 U.S.C. § 501, *et seq.*, and circumvention of copyright protection systems pursuant

to 17 U.S.C. § 1201, *et seq.* After Plaintiff filed a copyright infringement suit against Defendant in January 2014, based on Defendants unlicensed use of Plaintiff's proprietary NX® software product (the "NX Software") (*see* Case No. 4:14-cv-00002-DDB, E.D. Tex), Plaintiff obtained a default judgment in the amount of \$167,500.00. Thereafter, Plaintiff and Defendant entered into a Settlement Agreement and Release (the "Settlement Agreement") (Dkt. #10 at 12) whereby Defendant agreed to pay \$167,500.00, over a period of eighty-four (84) months (the "Payments") in exchange for a release for its past infringement and Plaintiff's agreement not to enforce the default judgment in exchange. *See* Dkt. #1 at ¶¶ 6-7. Defendant made three Payments of \$2,000.00, and thereafter, failed to make any further payments, thereby breaching the Settlement Agreement. *Id.* at ¶ 8. The Complaint also alleges that Defendant resumed its unlicensed use of Plaintiff's NX Software in July 2017. *Id.* at ¶ 9.

Plaintiff now seeks the balance of unpaid Payments in the amount of \$161,500.00, damages for willful copyright infringement, as well as reasonable costs and attorneys' fees pursuant to the Settlement Agreement. *Id.* at ¶ 10. The Court held a hearing on the Motion on June 12, 2018, during which Plaintiff presented argument and evidence in support of its claim for damages, as well as its efforts to contact Defendant regarding these proceedings. At the conclusion of the hearing, the Court directed Plaintiff to submit additional evidence in support of its request for attorneys' fees and costs. *See* Dkt. #13. Thereafter, Plaintiff submitted Plaintiff's Supplement in Support of Motion for Default Judgment (the "Supplement") (Dkt. #15).

I. DISCUSSION

This lawsuit seeks damages for breach of a settlement agreement, copyright infringement pursuant to 17 U.S.C. § 501, *et seq.*, and circumvention of copyright protection systems pursuant to 17 U.S.C. § 1201, *et seq.* According to the record, Defendant was properly served with the

Summons and Complaint. *See* Dkt. #5. More than twenty-one days have expired since Defendant was served, and Defendant has not entered an appearance and has not filed any pleadings in this case. On April 4, 2018, Plaintiff filed a request for Clerk's Entry of Default (Dkt. #6), which was entered on April 6, 2018 (Dkt. 7). Accordingly, the procedural requirements of Rule 55 have been satisfied such that the Court may properly enter default.

The record establishes that Defendant failed to abide by the terms of the Settlement Agreement. Defendant paid only \$6,000.00, of \$167,500.00, of the amount agreed to in the Settlement Agreement, and thus is in breach. Plaintiff is, therefore, entitled to the amount remaining due under the Settlement Agreement of \$161,500.00, as well reasonable costs and attorneys' fees as provided in the Settlement Agreement. *See id.*

The record also establishes that Defendant breached the Settlement Agreement by continuing to use Plaintiff's proprietary software without a license. Plaintiff here has established both elements of an infringement claim and has also established that Defendant's infringement was willful. Accordingly, Plaintiff is entitled to statutory damages up to \$150,000.00. and recovery of its attorneys' fees and costs.

The record further establishes that Plaintiff is entitled to \$17,473.20, for attorneys' fees and costs of \$1,121.78, including filing fees, service costs, and travel for Plaintiff's counsel. Pursuant to 17 U.S.C. § 505, the prevailing party in an action for willful copyright infringement may recover its reasonable and necessary attorneys' fees and costs. Further, the Settlement Agreement provides for the recovery of attorneys' fees in the event of a breach. The Court is satisfied that the hours expended and the fees charged were reasonable for such services in a lawsuit of this nature in the Eastern District of Texas.

Finally, the record establishes that Plaintiff made multiple attempts to contact Defendant regarding its breach of the Settlement Agreement and these proceedings (*see, e.g.*, Dkts, #15-2-15-5, 16 at 5-6) and also served Defendant with a copy of the Report recommending entry of default judgment (*see* Dkt. #18). Defendant has not entered an appearance in this action, nor timely filed written objections to the Report.

II. CONCLUSION

IT IS THEREFORE ORDERED that Plaintiff's Motion for Default Judgment (Dkt. #8) against Defendant Mercury Metal Forming Technologies, LLC ("Defendant") is **GRANTED**, and a final judgment shall be entered in favor of Plaintiff.

IT IS SO ORDERED.

SIGNED this 30th day of October, 2018.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE